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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAG WEST, LLC, a California
limited liability company; THE
KENAN ADVANTAGE GROUP,
INC., a Delaware corporation,

Petitioners,

v.

PATRICK MALONE, an individual,

Respondent.

PATRICK MALONE, an individual,
on behalf of himself, all others
similarly situated, and the general
public,

Plaintiff,

v.

KAG WEST, LLC, a California
limited liability company,

Defendant.

Case No. 4:15-cv-03827-YGR

Case No. 4:15-cv-04262-YGR

*(Assigned to the Hon. Yvonne Gonzalez
Rogers)*

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER TO REMAND
ACTION TO ALAMEDA COUNTY
SUPERIOR COURT; VACATING
COMPLIANCE HEARING**

as modified by the Court

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21 Attorneys for Defendants and Petitioners KAG
22 WEST, LLC and THE KENAN ADVANTAGE
23 GROUP, INC.

1 This Joint Stipulation to Remand Action to Alameda County Superior Court
2 is made and entered into by and between Plaintiff and Respondent Patrick Malone,
3 individually and on behalf of the general public, and Defendants and Petitioners
4 KAG West, LLC and The Kenan Advantage Group, Inc. (“Defendants-Petitioners”)
5 (the “Parties”).

6 **WHEREAS**, the action of *KAG West, LLC, et al. v. Patrick Malone*,
7 Northern District of California Case No. 4:15-cv-03827-YGR was initiated by
8 Defendants-Petitioners on August 21, 2015 in the form of a Petition to Compel
9 Arbitration against Plaintiff-Respondent Patrick Malone for the various wage and
10 hour claims he had asserted in correspondence dated July 22, 2015 (“District Court
11 Action”);

12 **WHEREAS**, the alleged putative wage and hour class action and Private
13 Attorney General Act (“PAGA”) action of *Patrick Malone v. KAG West, LLC*,
14 Alameda County Superior Court Case No. RG15784137 was filed by Plaintiff-
15 Respondent in California Superior Court on September 1, 2015 (“California
16 Superior Court Action”);

17 **WHEREAS**, Defendants-Petitioners removed the California Superior Court
18 Action to the Northern District of California on September 18, 2015 (“Removed
19 California Superior Court Action”);

20 **WHEREAS**, District Court Judge Thelton E. Henderson (Ret.) granted
21 Defendants-Petitioners’ Petition to Compel Arbitration in the District Court Action
22 on November 3, 2015, correspondingly stayed Plaintiff Malone’s PAGA
23 representative claims and consolidated the District Court Action and the Removed
24 California Superior Court Action -;

25 **WHEREAS**, Plaintiff and Respondent Malone’s putative class claims were
26 subsequently dismissed by a JAMS arbitrator;

27 **WHEREAS**, in addition to the consolidated action in federal court for claims
28 brought forth by Mr. Malone, a representative PAGA suit initiated by an individual

1 named James Souza remains pending in Alameda County Superior Court under the
2 title of *James Souza v. KAG West, LLC*, Case No. RG16814354. Mr. Souza is
3 represented by the same counsel of record in this action;

4 **WHEREAS**, the *Souza v. KAG West* action, as a PAGA only action, could
5 not be removed to the Northern District of California from Alameda County
6 Superior Court as currently pled and remains pending there;

7 **WHEREAS**, the Parties in this consolidated action, along with Plaintiff
8 James Souza in *James Souza v. KAG West, LLC*, Case No. RG16814354, have
9 reached a global settlement of their wage and hour claims against Defendants-
10 Petitioners that is subject to court review and approval;

11 **WHEREAS**, this global settlement, if approved, would resolve all claims
12 alleged in this consolidated action, in Malone's individual action pending in
13 arbitration before JAMS, and in the Alameda County Superior Court *Souza* PAGA
14 action;

15 **WHEREAS**, the Parties believe it would be most efficient to have a single
16 court consider their global settlement;

17 **WHEREAS**, it is in the interests of judicial economy to have a single court
18 consider the global settlement reached by the Parties;

19 **WHEREAS**, the present consolidated federal court action could be
20 remanded from the Northern District of California back to state court based on the
21 original filing of the *Malone v. KAG West* California Superior Court Action in
22 Alameda County Superior Court;

23 **IT IS THEREFORE AGREED BETWEEN THE PARTIES BY AND**
24 **THROUGH THEIR COUNSEL OF RECORD THAT:**

25 1. For the sole purpose of facilitating state court review and potential
26 approval of the Parties' global settlement of all disputed claims between the Parties,
27 this consolidated action shall be remanded back to Alameda County Superior Court
28 under the docket *Patrick Malone v. KAG West, LLC*, Case No. RG15784137.

1 **IT IS SO STIPULATED.**

2
3 Dated: July 17, 2018

LAW OFFICES OF THOMAS W.
FALVEY
ALEXANDER KRAKOW + GLICK, LLP

6 By: s/Michael Morrison

7 Thomas W. Falvey
8 Michael H. Boyamian
9 Armand R. Kizirian
10 Michael S. Morrison
11 Attorney for Respondent
12 PATRICK MALONE

13 Dated: July 17, 2018

CURLEY HESSINGER & JOHNSRUD
LLP

15 By: s/ Stephen Yang

16 Brian Lee Johnsrud
17 Victoria R. Carradero
18 Stephen Yang
19 Attorney for Petitioners
20 KAG WEST, LLC and THE KENAN
21 ADVANTAGE GROUP

1 **[PROPOSED] ORDER**


2 Having reviewed the Parties' Joint Stipulation to Remand Action to Alameda
3 County Superior Court, and good cause appearing, the Court hereby rules as
4 follows:
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6 1. This consolidated action is **ORDERED** remanded back to Alameda
7 County Superior Court under the docket *Patrick Malone v. KAG West, LLC*, Case
8 No. RG15784137.

9 2. The compliance hearing set for July 20, 2018 is hereby **VACATED**.

10 The Clerk shall close the file.
11

12
13 Dated: July 17, 2018

14 By: 
15 Hon. Yvonne Gonzalez Rogers
16 United States District Court Judge
17 Northern District of California
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